

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12934 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes

3 to 5 No

MOHANBHAI JIVAJI ASARI

Versus

DIRECTOR

Appearance:

MRS SANGEETA N PAHWA for Petitioner

MR V.B. GARANIA FOR MR DA BAMBHANIA, learned
Add.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/07/96

ORAL JUDGMENT

1. This Special Civil Application is directed against the order dated 25-11-94 passed by the Director, Paraplegia Hospital, Ahmedabad terminating the services of the petitioner from the post of leather worker on the

ground that the Director, Medical Education and Research, State of Gujarat has not accorded sanction to the petitioner's appointment as leather worker.

2. The petitioner is a member of Scheduled Tribe.

The post of leather worker was advertised for ad hoc appointment in the year 1991 and in response to this notice inviting applications through advertisement the petitioner applied. The petitioner faced the selection and on the basis of the selection held for the purpose, the appointment was given to him after interview on the post of leather worker on 30-12-91 on the conditions mentioned therein. One of the conditions mentioned in the appointment order was that it was subject to sanction by the Director, Health and Medical Services and Medical Education, the State of Gujarat and appointment was for a period of one year in the first instance. This appointment, given to the petitioner in December 1991, was extended from time to time by different orders and the last order was issued on 30-6-94 extending the period of appointment upto 31-12-94. While the petitioner was so continuing on the post of leather worker since December, 1991, an order was passed on 25-11-94 by the Director, Paraplegia Hospital, Ahmedabad terminating his services on the ground that his appointment had not been sanctioned by the Director, Medical Education and Research as per the above authority's letter dated 24-11-94 mentioned at item No.1 of the Reference in the impugned order dated 25-11-94. This order dated 25-11-94 has been challenged by the petitioner in the present petition.

3. In the affidavit-in-reply dated 8-8-95, which has been filed on behalf of the respondents, the fact with regard to the petitioner's appointment in December, 1991 and that he was continued by various orders and that lastly the order dated 30-6-94 was passed extending his services upto 31-12-94 has not been disputed, but it has been stated that the petitioner's services had to be terminated because the appointment had been made contrary to the Rules and Regulations and without approval. The termination order has been passed in accordance with the terms of appointment.

4. From the pleadings it was not clear as to what was the exact requirement under the Rules and what is it that the petitioner was actually lacking and, therefore, Mr. Garania was asked to produce the relevant records including the petitioner's application and the set of the Rules as also the copy of the notice inviting

applications i.e. advertisement. The record has been produced before the Court today alongwith the set of Rules, advertisement, petitioner's application etc. in presence of Mr. C.N. Jani, Office Superintendent, Director, Health, Medical Service and Medical Education and Research, Government of Gujarat. Mr. Garania has also produced the xerox copy of a letter dated 16-1-96, which was sent to Shri B.D.Desai, Government Pleader, Gujarat High Court stating therein that the petitioner's case was being sympathetically considered by the Government. The case of the respondents is that according to the Rules notified on 7-11-84, the qualifications for the post of leather worker are as under:

"(b) possess-

(i) I.T.I. Trade Certificate course in Leather Technology;

(ii) 3 years experience in manufacturing of shoes and leather works;

Or

(c) (i) have passed the Vth standard Examination and an experience of Five years in shoe making and knowledge of making leather padding of Caliber, Belts, Coller, Surgical shoes;

(ii) adequate knowledge of Gujarati or Hindi or both;"

It is submitted that the petitioner had also enclosed experience certificate alongwith his application at the time when he applied for the post of leather worker and it is found that at the time of his appointment as a leather worker he had working experience for a period of 3 years and 3 months only whereas he being 5th standard pass was required to possess 5 years experience in shoe making and knowledge of making leather paddling etc. as provided in Rule 3(c)(i). Whereas he did not possess the requisite experience of 5 years at the time of his appointment, Additional Director, Medical Education and Research, Gandhinagar sent a letter dated 24-11-94 to the Director, Paraplegia Hospital on the basis of a letter dated 7-11-84, which had been received by the Additional

Director, Medical Education and Research from the Section Officer of Health and Family Planning Department, Government of Gujarat and accordingly the Director, Paraplegia Hospital issued an order dated 25-11-94 terminating the services of the petitioner as his appointment had not been sanctioned.

5. It is, therefore, very clear from the pleadings of the parties and the requirements for the post, as mentioned in the Rules, that at the time of his appointment in December, 1991, the petitioner was lacking the requisite experience of 5 years. At the same time, it is also clear that the petitioner did not misrepresent any fact and did not withhold any information and as per the Certificate, which he had enclosed with the Application, he, from his side, never claimed that he was having the requisite experience of 5 years. The Selection Committee considered the candidature of the petitioner and after interview selected the petitioner and appointment was given to him in anticipation of the sanction by the Government. This fact is also not contested that in fact the petitioner did possess the experience of 3 years and 3 months. While at the time of his appointment in the year 1991, he was lacking the requisite experience by a period of 1 year and 9 months and whereas the petitioner had already acquired this experience of 1 year and 9 months while working under the appointment order dated 31-12-91 and thus in the month of September 1993 the petitioner had gained requisite experience of 5 years and it is also clear that at the time the impugned order was passed on 25-11-94 he was having the requisite experience of 5 years to his credit, ofcourse a part of this experience i.e. 1 year and 9 months he had acquired under the appointment order dated 31-12-91, Ms. Pahwa appearing on behalf of the petitioner has submitted that it cannot be said to be a case in which the appointment can be said to be null and void and at the most it can be said to be a case of an irregularity in the appointment, which was given in anticipation of the sanction and whereas the petitioner had acquired the requisite experience by working on the strength of the appointment order dated 31-12-91, there was no justification for terminating the services at a point of time when he was already having such experience to his credit in the year 1994. She has placed reliance on a Supreme Court decision reported in AIR 1978 SC 1536 (Ram Sarup v. State of Haryana). In Ram Sarup's case the appointment was given on the post of Labour-cum-Conciliation Officer in January 1968 on his transfer from the post of Chief Inspector of Shops, which the petitioner was already holding at that particular

point of time. This appointment as Labour-cum-Conciliation Officer continued till April 1977 when the order was passed by the Government reverting him to the post of Statistical officer on the ground that he was lacking experience for the post of Labour-cum-Conciliation Officer at the time when he was so appointed in 1968 and thus according to the Rules he did not fulfil the requisite experience of 5 years for the post on which he had been appointed. The Supreme Court found that the appointment given to the petitioner in that case was only irregular and as soon as he acquired the necessary experience of 5 years of the working, the appointment must be regarded as having been regularised and the appointment of the petitioner in that case was held to be regular from the date he gained 5 years experience. Looking to the facts of this case at hand and the facts which were considered by the Supreme Court in Ram Sarup's case (Supra), I find that the petitioner's case is fully covered and the petitioner's appointment, even if it was irregular in December, 1991, this irregularity was cured in September, 1993 by aggregating the experience which he was already having prior to the date of his appointment and the experience which he gained while working on the strength of the order dated 31-12-91 and, therefore, after September, 1993 the petitioner did not lack any amount of experience and accordingly there was no lawful justification for terminating the services in the year 1994 by impugned order dated 25-11-94.

6. I find from the order sheet that on 28-11-94 an ad interim order was passed that the post which was held by the petitioner will not be filled up without permission of the Court. This ad interim order has continued through-out the pendency of this petition and there is no dispute that the post is available and it has not been filled up and as such there can not be any difficulty in petitioner's reinstatement on the aforesaid post and his reinstatement is also not going to effect anybody else.

7. Therefore, this Special Civil Application deserves to be allowed and the same is hereby allowed. The impugned order dated 25-11-94 based on the Director, Medical Education and Research's letter dated 24-11-94 is hereby quashed and set aside and it is directed that the petitioner shall be reinstated on the post of leather worker, which he was holding prior to the passing of the impugned order dated 25-11-94 and the petitioner shall be entitled to all consequential benefits as if the impugned order dated 25-11-94 had not been passed. Rule is made

absolute accordingly with no order as to costs.

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